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## SENATE BILL No. 140

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-2-22; IC 27-4-1-4.

**Synopsis:** Use of credit report information. Provides that: (1) a motor vehicle insurance rating plan may not use, as a rating factor, adverse credit report information; and (2) a motor vehicle insurer may not consider adverse credit report information in certain underwriting activities.

**Effective:** July 1, 2004.

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January 6, 2004, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 140

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2004]:

4 **Chapter 22. Use of Credit Report Information by Motor Vehicle**  
5 **Insurers**

6 **Sec. 1. This chapter applies only to an applicant or a**  
7 **policyholder who is an individual.**

8 **Sec. 2. As used in this chapter, "insurer" has the meaning set**  
9 **forth in IC 27-1-2-3(x).**

10 **Sec. 3. As used in this chapter, "motor vehicle insurance" means**  
11 **any kind of insurance described in IC 27-1-5-1, Class 2(f).**

12 **Sec. 4. Notwithstanding IC 27-2-21, a motor vehicle insurance**  
13 **rating plan filed under IC 27-1-22-4 may not use adverse**  
14 **information on an individual's credit report as a rating factor.**

15 **Sec. 5. Notwithstanding IC 27-2-21, in:**

- 16 (1) **deciding whether to issue; or**  
17 (2) **setting the premium for;**

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a motor vehicle insurance policy, an insurer may not consider adverse information on the credit report of an individual who would be covered under the policy as a named insured or as the spouse or family member of a named insured.

**Sec. 6. A violation of this chapter by an insurer is an unfair and deceptive act and practice in the business of insurance under IC 27-4-1-4.**

**Sec. 7. This chapter is not intended to conflict with any disclosure provisions of state law or the federal Truth in Lending Act (15 U.S.C. 1601 et seq.) applying to lending institutions, credit bureaus, or other credit service organizations that maintain or distribute credit histories on insurance applicants or policyholders.**

SECTION 2. IC 27-4-1-4, AS AMENDED BY P.L.178-2003, SECTION 35, AS AMENDED BY P.L.201-2003, SECTION 2, AND AS AMENDED BY P.L.211-2003, SECTION 1, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender ~~his~~ *the policyholder's* insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or

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1 television station, or in any other way, an advertisement,  
 2 announcement, or statement containing any assertion,  
 3 representation, or statement with respect to any person in the  
 4 conduct of ~~his~~ *the person's* insurance business, which is untrue,  
 5 deceptive, or misleading.

6 (3) Making, publishing, disseminating, or circulating, directly or  
 7 indirectly, or aiding, abetting, or encouraging the making,  
 8 publishing, disseminating, or circulating of any oral or written  
 9 statement or any pamphlet, circular, article, or literature which is  
 10 false, or maliciously critical of or derogatory to the financial  
 11 condition of an insurer, and which is calculated to injure any  
 12 person engaged in the business of insurance.

13 (4) Entering into any agreement to commit, or individually or by  
 14 a concerted action committing any act of boycott, coercion, or  
 15 intimidation resulting or tending to result in unreasonable  
 16 restraint of, or a monopoly in, the business of insurance.

17 (5) Filing with any supervisory or other public official, or making,  
 18 publishing, disseminating, circulating, or delivering to any person,  
 19 or placing before the public, or causing directly or indirectly, to  
 20 be made, published, disseminated, circulated, delivered to any  
 21 person, or placed before the public, any false statement of  
 22 financial condition of an insurer with intent to deceive. Making  
 23 any false entry in any book, report, or statement of any insurer  
 24 with intent to deceive any agent or examiner lawfully appointed  
 25 to examine into its condition or into any of its affairs, or any  
 26 public official to which such insurer is required by law to report,  
 27 or which has authority by law to examine into its condition or into  
 28 any of its affairs, or, with like intent, willfully omitting to make a  
 29 true entry of any material fact pertaining to the business of such  
 30 insurer in any book, report, or statement of such insurer.

31 (6) Issuing or delivering or permitting agents, officers, or  
 32 employees to issue or deliver, agency company stock or other  
 33 capital stock, or benefit certificates or shares in any common law  
 34 corporation, or securities or any special or advisory board  
 35 contracts or other contracts of any kind promising returns and  
 36 profits as an inducement to insurance.

37 (7) Making or permitting any of the following:

38 (A) Unfair discrimination between individuals of the same  
 39 class and equal expectation of life in the rates or assessments  
 40 charged for any contract of life insurance or of life annuity or  
 41 in the dividends or other benefits payable thereon, or in any  
 42 other of the terms and conditions of such contract; however, in

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determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy

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1 issued thereon, or paying or allowing, or giving or offering to pay,  
 2 allow, or give, directly or indirectly, as inducement to such  
 3 insurance, or annuity, any rebate of premiums payable on the  
 4 contract, or any special favor or advantage in the dividends,  
 5 savings, or other benefits thereon, or any valuable consideration  
 6 or inducement whatever not specified in the contract or policy; or  
 7 giving, or selling, or purchasing or offering to give, sell, or  
 8 purchase as inducement to such insurance or annuity or in  
 9 connection therewith, any stocks, bonds, or other securities of any  
 10 insurance company or other corporation, association, limited  
 11 liability company, or partnership, or any dividends, savings, or  
 12 profits accrued thereon, or anything of value whatsoever not  
 13 specified in the contract. Nothing in this subdivision and  
 14 subdivision (7) shall be construed as including within the  
 15 definition of discrimination or rebates any of the following  
 16 practices:

17 (A) Paying bonuses to policyholders or otherwise abating their  
 18 premiums in whole or in part out of surplus accumulated from  
 19 nonparticipating insurance, so long as any such bonuses or  
 20 abatement of premiums are fair and equitable to policyholders  
 21 and for the best interests of the company and its policyholders.

22 (B) In the case of life insurance policies issued on the  
 23 industrial debit plan, making allowance to policyholders who  
 24 have continuously for a specified period made premium  
 25 payments directly to an office of the insurer in an amount  
 26 which fairly represents the saving in collection expense.

27 (C) Readjustment of the rate of premium for a group insurance  
 28 policy based on the loss or expense experience thereunder, at  
 29 the end of the first year or of any subsequent year of insurance  
 30 thereunder, which may be made retroactive only for such  
 31 policy year.

32 (D) Paying by an insurer or ~~agent~~ *insurance producer* thereof  
 33 duly licensed as such under the laws of this state of money,  
 34 commission, or brokerage, or giving or allowing by an insurer  
 35 or such licensed ~~agent~~ *insurance producer* thereof anything of  
 36 value, for or on account of the solicitation or negotiation of  
 37 policies or other contracts of any kind or kinds, to a broker,  
 38 ~~agent, an insurance producer~~, or a solicitor duly licensed  
 39 under the laws of this state, but such broker, ~~agent, insurance~~  
 40 *producer*, or solicitor receiving such consideration shall not  
 41 pay, give, or allow credit for such consideration as received in  
 42 whole or in part, directly or indirectly, to the insured by way of

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rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance ~~agent~~ *producer* or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of ~~its or his~~ *the lender's* right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of ~~agents~~ *insurance producers* or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, ~~agent,~~ *insurance producer*, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of ~~his, her, or its~~ *the* right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the

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following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health

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- 1 insurance policy solely because of the individual's medical or
- 2 physical condition.
- 3 (18) Using a policy form or rider that would permit a cancellation
- 4 of coverage as described in subdivision (17).
- 5 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
- 6 vehicle insurance rates.
- 7 (20) Violating IC 27-8-21-2 concerning advertisements referring
- 8 to interest rate guarantees.
- 9 (21) Violating IC 27-8-24.3 concerning insurance and health plan
- 10 coverage for victims of abuse.
- 11 (22) Violating IC 27-8-26 concerning genetic screening or testing.
- 12 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
- 13 insurance producers.
- 14 (24) Violating IC 27-1-38 concerning depository institutions.
- 15 (25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning
- 16 the resolution of an appealed grievance decision.
- 17 ~~(25)~~ (26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or
- 18 IC 27-8-5-19.2.
- 19 ~~(25)~~ (27) Violating IC 27-2-21 concerning use of credit
- 20 information.
- 21 **(28) Violating IC 27-2-22 concerning use of credit report**
- 22 **information by motor vehicle insurers.**

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